

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LINGAN SATKUNANATHAN,
YUSUFALI SAMEER MERCHANT, and
GARY P. RADEN

Appeal No. 2007-0519
Application No. 10/723,324¹
Technology Center 3600

Decided: May 18, 2007

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
LINDA E. HORNER, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

¹ Filed 26 November 2003.

This is an appeal from a decision of the Examiner rejecting claims 1-4, 6-18, 20-33, and 35-43. 35 U.S.C. § 134 (2002). We have jurisdiction under 35 U.S.C. § 6 (b) (2002).

We AFFIRM.

Appellants, in the Brief², argue the claims as one group. Pursuant to the rules, the Board selects representative claim 1 to decide the appeal. 37 CFR § 41.37(c)(1)(vii) (2006). Accordingly, all the claims stand or fall with claim 1.

Claim 1 reads as follows:

1. A license enforcement system, comprising:
 - a monitoring component that determines a current number (M) of users logged on to an application under a license;
 - an enforcement component that dynamically takes corrective action if M exceeds an authorized number (N) of users permitted under the license;
 - and
 - a validation component that periodically checks stored license data to ensure that the data has not been corrupted.

The Examiner has finally rejected claims 1-4, 6-18, 20-33, and 35-43 under 35 U.S.C. § 102(b)³ as being anticipated by Christiano (U.S. Patent No. 5,671,412).

² Our decision will make reference to Appellants' Appeal Brief ("Brief," filed 3 January 2006) and to the Examiner's Answer ("Answer," mailed 1 June 2006) and Appellants' Reply Brief ("Reply," filed 1 August 2006).

³ Christiano issued on 23 September 1997. Accordingly, Christiano qualifies as prior art under 35 U.S.C. § 102(b). The first Office action (mailed 26 April 2005) recited the rejection as under § 102(b), but the statement of the rejection in the Answer refers to § 102(e), apparently by mistake.

A. ISSUE

The Examiner makes an element-by-element analysis of the claim and shows where each element is described in Christiano. Answer 3-6.

Appellants argue solely that “Christiano does not teach or suggest a validation component that periodically checks stored license data to ensure that the data has not been corrupted as recited in independent claim 1” Brief 4 (emphasis omitted).

The issue is whether Christiano describes the claimed validation component.

B. FINDING OF FACTS (FF)

The record supports the following findings of fact by a preponderance of the evidence.

1. The claimed subject matter is directed to a software license enforcement system that monitors the number of users logged on to a licensed application and takes corrective action if the number of users logged on to the licensed application exceeds the number authorized under the license. The claimed system includes a validation component.
2. Claim 1 defines the validation component as follows:
a validation component that periodically checks stored license data to ensure that the data has not been corrupted.

3. Christiano (col. 6, ll. 34-37) describes a system for managing software licenses comprising a license server that stores licenses. When a user wants to use a particular program, a request for a license to operate the program is sent to the license server. If the user is permitted to operate the program according to a license policy, the server assigns a license for that program to the client computer system and the user can then operate the program. The Christiano system takes corrective action when the license is violated, including denying a license when the maximum number of licenses for the program have been assigned (col. 7, ll. 9-11).

4. Christiano's license server includes a database of license records. These records may include software package and license descriptions (col. 9, ll. 44-50). They may also include a key.

The "KEY" provides an authentication, such as an X-digit number or string of characters, which allows the server process to verify that the package description has not been tampered with.

Col. 11, lines 45-48.

5. According to Christiano (referring to Figure 9)

[i]f a license record is available in the database, then in optional step 163, the key stored in the found license record is verified to determine if the license record has not been tampered with and is legitimate If the record is not legitimate, then step 180 is implemented [i.e., step 180 = "Is there another record in license database for requested product?"].

Col. 19, lines 17-25.

6. We cannot find, and Appellants have not shown where, in the Specification the claim term "corrupted" is defined.

7. The Specification discloses the following:

Validation component 140 can provide periodic (e.g., daily, after restoring licenses from backup ...) validity checks on the license store 110 to ensure that data has not been tampered with by malicious individuals or otherwise corrupted. The validations can be accomplished by retrieving a license key

Page 9, lines 1-4.

8. “Periodically” means “from time to time.” Webster’s New World Dictionary 1004, definition 2 (Third College Edition, 1988).

C. PRINCIPLES OF LAW

1. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).
2. Anticipation is a question of fact. *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).
3. Claims are given the broadest reasonable construction consistent with the specification. *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

D. ANALYSIS

The issue is whether Christiano describes the claimed validation component. We find that it does.

Christiano describes a system comprising a verification component for checking whether a stored license has been tampered with and to take action if that is the case. FF 4 and 5. Christiano's system ensures the proper license is stored by first checking a key. Christiano checks a key associated with the license to determine whether the stored license has been tampered with. While it is true, as Appellants argue (Br. 6), that Christiano checks the key rather than the license data itself; nevertheless, Christiano is checking the license data to determine if it has been tampered with, albeit indirectly. The claimed validation component likewise checks stored data. However, the claim does not say how that checking is performed. Therefore, checking stored data using a key is not precluded by the claim and the claim therefore encompasses the indirect technique Christiano describes.

Appellants also argue that Christiano, unlike the claimed validation component, does not check to see if the stored data is "corrupted." Br. 6, ll. 11-19. While it is true that Christiano does not use the term "corrupted" to describe the condition of the stored license being checked, that is nevertheless what Christiano is doing when it checks to see if the record has been "tampered with." The Specification does not give the term "corrupted," as it is used in the claim, a meaning that is different from its ordinary and customary meaning. FF 6. To one of ordinary skill in the art, a "corrupted" record is a record that has been altered, and

that would include records having been “tampered with.” When a stored license is tampered with, it is corrupted. That is consistent with the way the term is used in the Specification. FF 7. Accordingly, in claiming that the validation component checks to see if the stored data is “corrupted,” it reads on Christiano’s checking to see if the record has been “tampered with.”

Finally, Appellants submit that its validation component distinguishes from that of Christiano because Christiano does not describe “periodically” checking stored data to ensure that the data has not been corrupted. Appellants (Br. 5, ll. 16-18) argue that one of ordinary skill reading the claim would construe “periodically” as recited in the claim to mean at regular intervals. But the plain meaning of the term “periodically” is from time to time. FF 8. Furthermore, the specification does not define the term any more narrowly than the plain meaning would give it. Appellants cite page 9, ll. 1-3, to argue that “the instant specification teaches checking of license data with a fixed frequency (e.g., daily), which is a periodic event.” Br. 5, ll. 21-23. However, what it actually says is: “Validation component 140 can provide periodic (e.g., daily, after restoring licenses from back-up ...) validity checks on the license store 110” The Specification actually gives the term “periodic” a much broader definition; one covering both checking at regular intervals (e.g., daily) and, as can be the case when one restores licenses from back-up, from time to time. When given the broadest reasonable construction in light of the Specification as interpreted by one of ordinary skill in the art, the claim encompasses a system comprising a validation component which checks license data from time to time. Accordingly, in requiring

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that the component “periodically” check the data, the claim is not limited, as Appellants argue, so as to require the checking to occur at regular intervals. All that is necessary is that the checking be performed intermittently, a frequency of occurrence which reads on Christiano (col. 18, l. 62 - col. 19, l. 45) and which Appellants concede Christiano describes (see Br. 5, ll. 18-19: “the reference discloses that the server has the ability to check license data in some manner.”)

The rejection is affirmed.

CONCLUSION OF LAW

On the record before us, Appellants have failed to show that the Examiner erred in rejecting the claims over the prior art.

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DECISION

The Examiner's rejection of claims 1-4, 6-18, 20-33, and 35-43 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2004).

AFFIRMED

vsh

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